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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 JOE J.W. ROBERTS, JR.,

9 Plaintiff,

10 v.

11 VILMA KHOUNPHIXAY, et al.,

12 Defendants.

CASE NO. 2:18-cv-00746-MJP-BAT

**ORDER DENYING MOTIONS
WITHOUT PREJUDICE**

13 On May 24, 2018, the Court directed service of the summons and complaint upon all
14 named Defendants (Vilma Khounphixay, J. Warner, J. Robison, Lynn (Nurse), Heather Helms,
15 Lindsay McIntyre, and Officer Ayala). Dkt. 6. With the exception of “Lynn (Nurse),” all
16 Defendants returned waivers of service, have answered Plaintiff’s Complaint, and are defending
17 this action. No waiver of service was returned for “Lynn (Nurse).” In addition to the named
18 Defendants, Plaintiff listed John Doe Correctional Officers 1-3. Because Defendant “Lynn” and
19 the “John Doe” defendants were never properly identified or served, the Court lacks jurisdiction
20 over them.

21 On September 21, 2018, Defendants moved for judgment on the pleadings. Dkt. 33.
22 Defendants also filed a motion for protective order to stay all discovery pending the Court’s
23 adjudication of their motion for judgment on the pleadings. Dkt. 35. The Court granted the

1 motion and stayed all discovery pending its adjudication of the motion for judgment on the
2 pleadings. Dkt. 46 at 2. In the meantime, the Court ordered Plaintiff to provide the full name and
3 address of the partially identified “Lynn, Nurse” if he intended to proceed against her in this
4 action. Dkt. 39.

5 Plaintiff advises that he does not have this information (or information identifying the
6 John Doe defendants) and he does not have reasonable access to this information, but he did
7 request the information in discovery (*i.e.*, names all correction staff on duty in the intensive
8 management unit who were involved with his care and placement in restraints from April 23,
9 2018 through May 8, 2018). *See, e.g.*, Dkt. 36-1, p. 5. However, because all discovery was
10 stayed, that information has not yet been provided to him. On October 12, 2018, Plaintiff filed a
11 motion to compel discovery (Dkt. 45), and on November 8, 2018, he filed a motion for
12 reconsideration (Dkt. 53) asking the Court to reconsider its stay of discovery.

13 The Court is mindful that Plaintiff has taken steps within his power to ascertain the
14 identity and whereabouts of these individuals but the information is clearly in the possession and
15 control of the defendants. Thus, it would be unfair to dismiss these defendants without allowing
16 Plaintiff the information and time necessary to attempt to identify and serve them. However, at
17 this juncture in the proceedings, it is not necessary to grant Plaintiff the relief he seeks. The
18 Court can determine if Defendants are entitled to judgment on the pleadings without knowing the
19 names and addresses of the unidentified defendants because judgment on the pleadings turns on
20 the facts alleged in the complaint. The Court considers all factual allegations in the complaint
21 and accepts them as true and construes them in the light most favorable to Plaintiff in
22 determining whether he has stated a claim. The Court will make this determination as to each of
23 Plaintiff’s claims and as to each of the defendants, even without knowing a particular

1 defendant's name. If the Court determines that Plaintiff has stated a viable claim or claims, the
2 stay on discovery shall be lifted and this case shall proceed on the viable claim or claims.

3 Accordingly, it is **ORDERED**:

4 1) Plaintiff's motions to compel (Dkt. 45) and for reconsideration (Dkt. 53) are
5 **DENIED without prejudice.**

6 2) The Clerk shall send a copy of this Order to Plaintiff and to counsel for
7 Defendants.

8 DATED this 13th day of November, 2018.

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12 BRIAN A. TSUCHIDA
13 Chief United States Magistrate Judge
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